



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,493	10/29/2003	Alexander Greenspan	25737-00002	5734

33772 7590 01/04/2005
MCDONALD HOPKINS CO., LPA
2100 BANK ONE CENTER
600 SUPERIOR AVENUE, E.
CLEVELAND, OH 44114-2653

EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/696,493

Applicant(s)

GREENSPAN ET AL.

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 13-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore. Moore discloses a device comprising a base (18) and platform (1) rotatably tiltably connected to the base. Regarding the language, “for continuous passive motion” has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claim 2, the device comprises a roller bearing (2) in the base. Regarding the language, “to assist in permitting the rotatably tiltable motion of said platform relative to said base” has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claims 3-4, the language has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claim 5, the platform has a foot engaging top surface (col. 2, lines 55-65). As to claim 6, the surface includes a traction control surface (71). As to claim 7, the surface is a rubber sheet (16). As to claim 8, figure 1 discloses a base having a ground engaging surface and top surface that is concave and a platform having a convex bottom surface. The convex surface nests within the concave surface. Regarding the language, “permitting said platform to be rotatably tiltable relative to said base”

has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claim 9, the platform is rotatable (fig. 1). As to claim 10, the roller bearing is located in the base (fig. 1). Regarding the language, "to assist in permitting the rotatable tiltable motion of said platform relative to said base" has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure.

b. Claims 1, 3-4, 12 and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Cassidy et al. Cassidy et al disclose a device comprising a base (12) and platform (80) rotatably (at 84) tiltable (fig. 4) connected to the base. Regarding the language, "for continuous passive motion" has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claims 3-4, the language has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claims 12 and 23, the device comprising a base (12), platform (80) and motor (102) within the base. Regarding the language, "said motor driving said platform for continuous active motion relative to said base during activation", "wherein said platform is rotatably tiltable connected to said base at a position offset from the center of said platform", "for continuous active motion relative to said base during activation" has not been given patentable weight because the limitation is purely functional in nature and does not recite any structure. As to claim 24, the motor has a remote (126).

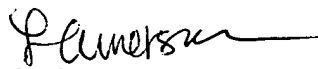
Conclusion

2. Claims 13-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4971. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


L. Amerson